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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,048	06/04/2002	Gunter Ritter	6236-16-DCL	6731

7590 10/05/2004

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EXAMINER	
METZMAIER, DANIEL S	

ART UNIT	PAPER NUMBER
1712	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/088,048	RITTER, GUNTER	
	Examiner	Art Unit	
	Daniel S. Metzmaier	1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 July 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) *23 and 24* is/are allowed.

6)☒ Claim(s) *11-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 11-24 are pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 19, 2004 has been entered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11-16, 18 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mehansho et al, US 5,118,513, as evidenced by any commercially available multivitamin label and/or source. Mehansho et al (abstract, examples; particularly example XV; column 12, lines 30-43; and the claims) discloses fortified beverage compositions comprising fructose and dextrose; iron, calcium and sodium salts of organic carboxylic acids; and a multivitamin supplement.

Mehansho et al (abstract) discloses the use of citrates, tartrates, or ascorbates. Since the instantly preferred and claim salt forming acids are specifically mentioned,

said disclosure of said salt forming acids anticipates applicants' claims. Likewise, Mehansho et al (column 6, lines 14-16) discloses the use of sucrose, which reads on saccharose. Mehansho et al (column 12, lines 30-43) further characterizes the calcium citrate-malate isproportionates to form free acid including citric acids.

Furthermore, at least the iron salts and/or the sodium salts read on the required trace elements.

The claimed preamble; "A water treatment compositions for long-term improvement of the water quality of biological maintenance systems" does not distinguish the claims over the Mehansho et al reference since the Mehansho et al are aqueous beverages. Also, there is nothing of record or in the reference that would preclude the addition of the Mehansho et al compositions to a biological maintenance system.

To the extent vitamin B is not specifically recited, said B vitamins would have been inherently within the breadth of multivitamins as disclosed as evidenced by commercially available multivitamin labels and/or multivitamin sources, which are known to include the physiologically desired B vitamins.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 12-16, 18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehansho et al, US 5,118,513, in view of Kovacs, US 5,118,513. Mehansho et al (abstract, examples; particularly example XV; column 12, lines 30-43; and the claims) discloses fortified beverage compositions comprising fructose and dextrose; iron, calcium and sodium salts of organic carboxylic acids; and a multivitamin supplement as set forth in the above anticipation rejection.

To the extent the Mehansho et al differs from the claims in disclosing the claimed compositions with sufficient specificity, it would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ the materials alone or in combination as taught in the Mehansho et al for their taught advantageous functions as functional equivalents to the exemplified compositions.

Kovacs is cited on the face of the Mehansho et al as prior art and is directed to supplemented food products wherein (column 3, lines 60 et seq) it is disclosed that the FDA has established recommended daily allowances for multiple vitamins including several B vitamins.

These references are combinable because Kovacs is cited on the Mehansho et al reference. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ the B vitamins in the Mehansho et al fortified beverages as a known required multivitamin desired and recognized as a daily requirement.

5. Claims 11-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over 103(a) as being unpatentable Warner-Lambert Company, WO 9734838, as evidenced

by patent family member to Ritter, US 6,477,982, in view of Warner-Lambert Company , WO/97/08960, as evidenced by patent family member to Kurzinger, US 6,306,453, and further in view of Tetra Werke DE 29617181 and/or Baensch DE 19704953.

Warner-Lambert Company '838 is a patent family member of Ritter. While the rejection is over the Warner-Lambert Company '838 reference, Ritter is evidence of the disclosure thereof in the English language. Warner-Lambert Company '960 is a patent family member of Kurzinger. While the rejection is over the Warner-Lambert Company '960 reference, Kurzinger is evidence of the disclosure thereof in the English language.

Warner-Lambert Company '838 discloses mitigating harmful effects to aquatic life resulting from the use of treated or purified water for human or animal consumption by the addition of additives to make the water approximate the natural water quality and including the addition of magnesium ions and tartaric and formic acid. Warner-Lambert Company '838 further teaches the addition of multiple additives into compositions for addition to an aquatic system.

Warner-Lambert Company '960 reference discloses addition of vitamins as anti-stress agent in aquatic systems.

While the water treatment composition of Warner-Lambert Company '838 may not contain Mg and/or Al-citrate or vitamins, it; would have been obvious to one skilled in the art at the time applicant ' s invention was made to incorporate one or both of Mg and Al-citrate and vitamins into the water treatment composition of Warner-Lambert Company '838 to contribute their pH stabilizing and/or buffering effects and vitamins as

anti-stress agents in view of the teachings and/or to replace the Ca:Mg ratio taught to be often absent in tap or drinking water.

Tetra Werke (page 11, taken with page 7, lines 5-11) or Baensch (column 3, lines 24-37) disclose additives known for the function including flocculating and providing a natural aquatic environment. The use of known additives for their known functions lacks patentable significance. See In re Sussman, 1943 CD 518.

Allowable Subject Matter

6. Claims 23 and 24 are allowed.

Response to Arguments

7. Applicant's arguments filed July 19, 2004 have been fully considered but they are not persuasive.

8. Applicants (page 8) assert the examiner's statement regarding the need for aluminum ions or other components seems to minimize the need for said components. The claims do not require aluminum ions but alternatively claim aluminum, iron, TiO^{2+} or ZrO^{2+}. Iron is a commonly occurring ion and/or element in biological maintenance systems. The addition of the naturally occurring ions would have been obvious to one having ordinary skill in the art at the time of the invention to create a natural environment for said biological maintenance systems. Furthermore, Ritter specifically discusses the addition of magnesium salts for the advantage of balancing the Ca:Mg ratio. The claims only require either a Ca salt or a Mg salt.

9. Applicants' (pages 8 and 9) arguments regarding the effects of using the compositions are not deemed persuasive because the compositions said effects result from are not commensurate in scope with the claimed compositions rejected.

10. Applicants (page 9) assert the '982 patent does not disclose or suggest a nitrogen free material b). This is not found persuasive since the polymers containing carboxyl groups disclosed as complexing groups in the reference are nitrogen free-materials, which are biologically decomposable organic compounds.

11. Applicants (page 9) assert the second PCT and '453 citing vitamin additions are added for a different purpose and the present invention and that of '453 are totally distinct in composition, properties and purpose. The rejected claims do not make said distinction. Also, the claims do not require any particular function of said vitamins and require that the composition improve the water quality. Anti-stress are taught as advantageous and would improve water quality as claimed. Furthermore, there is nothing of record that the vitamins adding with the prior art compositions for the function as anti-stress agents would not function as disclosed and claimed.

12. Applicants (page 9) assert DE 29617181 does not address the same problem as address in the instant invention. This has not been deemed persuasive since applicants assert "German patent 29617181 describes improving aquarium water with natural means". The instant preamble states: "for the long-term improvement of the water quality". The phrase "long term" is not defined in the claims. Both the instant invention and the German patent improve water quality.

13. Applicants (page 9) assert the German reference 19704953 is different because it teaches a two component-flocculating agent to remove algae or extreme amounts of unicellular organisms and is asserted as not filling the void or the present invention. Applicants (page 8, first full) of the above noted response characterize the instant compositions as providing precipitation, which is the function of flocculants. German reference 19704953 shows the addition of known flocculants for their art recognized function.

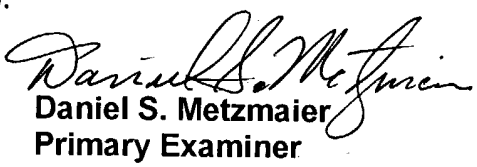
14. Regarding claim 17, Ritter teaches (column 3, lines 55 et seq) acids and saccharose acids as complex formers. The use of a combination would have been within the level of one having ordinary skill in the art. It is generally prima facie obvious to use in combination two or more ingredients that have previously been used separately for the same purpose in order to form a third composition useful for that same purpose. In re Kerkhoven, 626 F.2d 846, 205 USPQ 1069 (CCPA 1980); In re Pinten, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971); In re Crockett, 279 F.2d 274, 126 USPQ 186 (CCPA 1960). As stated in Kerkhoven and Crockett, the idea of combining them flows logically from their having been individually taught in the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM